



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP -8 2011

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VIA FIRST-CLASS MAIL and FACSIMILE
FAX NUMBER: 540-341-8809

RE: MUR 6496
NSSTA and NSSTA PAC

Dear Mr. Torchinsky:

On February 11, 2011, the Federal Election Commission (the "Commission") notified you of the receipt of your submission pertaining to possible violations by your clients, the National Structured Settlements Trade Association ("NSSTA") and the National Structured Settlements Trade Association Political Action Committee and Eric Vaughn, in his official capacity as treasurer, ("NSSTA PAC"), of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

After reviewing your initial submission, as well as supplements to that submission, the Commission, on August 30, 2011, found reason to believe that NSSTA and NSSTA PAC and Eric Vaughn, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a), and that NSSTA PAC and Eric Vaughn, in his official capacity as treasurer, violated 2 U.S.C. § 432(h), 11 C.F.R. § 103.3(a), 2 U.S.C. § 434(b)(1),(2), and (4), and 11 C.F.R. § 104.14(d). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determinations.

Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Vice-Chair

Enclosures
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT: National Structured Settlements Trade Association MUR 6496**
6 **National Structured Settlements Trade Association**
7 **Political Action Committee and Eric Vaughn,**
8 **in his official capacity as treasurer**
9

10 **I. GENERATION OF MATTER**

11 This matter was generated based on a ("Submission") filed by
12 National Structured Settlements Trade Association ("NSSTA") and the National Structured
13 Settlements Trade Association Political Action Committee and Eric Vaughn, in his official
14 capacity as treasurer, ("NSSTA PAC") disclosing violations of the Federal Election Campaign
15 Act of 1971, as amended ("the Act"). See 2 U.S.C. § 437g(a)(2).

16 **II. FACTUAL SUMMARY**

17 From 2007 through 2010, the management company hired to manage NSSTA PAC and
18 portions of NSSTA incorrectly deposited PAC funds into the NSSTA general corporate account
19 and NSSTA general account funds into the PAC's bank account, which resulted in (1) the late
20 deposit of certain PAC contributions, and (2) the PAC's receipt of corporate funds belonging to
21 NSSTA. Further, NSSTA PAC did not report the mis-deposits or subsequent corrective transfers
22 in its FEC disclosure reports. In addition to the deposit errors, the Submission identifies two
23 corporate contributions that the PAC received and refunded, but did not report, and certain other
24 reporting omissions on FEC disclosure reports dating back to 2007. The reporting errors resulted
25 in an incorrect cash-on-hand amount reported on each of NSSTA PAC's disclosure reports
26 beginning with its 2007 Year-End Report and continuing through 2010.

27 In 2007, NSSTA hired an association management company, Smith Bucklin, to manage
28 NSSTA PAC and to manage certain functions for NSSTA. Smith Bucklin processed dues and

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1 other payments made to NSSTA by trade association member companies, and federal political
2 contributions made to NSSTA PAC by employees of the member companies. The Submission
3 states that in 2010, NSSTA PAC's staff discovered inaccuracies in its 2009 disclosure reports
4 and as a result, conducted an examination of the PAC's financial records. This examination
5 revealed that they could not reconcile the PAC's bank records with the cash-on-hand as disclosed
6 to the Commission, and that certain contributions and expenditures had not been reported to the
7 Commission. See Submission at 1. After this discovery, "NSSTA terminated its relationship
8 with Smith Bucklin in May 2010" and later appointed a new PAC treasurer. See Submission
9 at 2. Counsel has indicated that Smith Bucklin did not cooperate with Respondents in
10 determining how the errors had occurred, and instead, NSSTA and NSSTA PAC hired counsel to
11 undertake an examination of the relevant financial records. This examination revealed that
12 Smith Bucklin, on behalf of the PAC, had deposited funds intended for NSSTA's bank account
13 into the PAC's bank account on multiple occasions. Further, on two occasions it deposited
14 contributions intended for the PAC's bank account into NSSTA's bank account.¹

15 Prior to the PAC's discovery of the discrepancies in its disclosure reports, Smith Bucklin
16 had apparently identified some of its own mistaken deposits, because the bank records reflect
17 that it corrected some, but not all, of the switched deposits by making subsequent corresponding
18 transfers between the NSSTA general bank account and the NSSTA PAC bank account within

¹ According to counsel, the PAC employees do not know how the management company accidentally deposited the funds into the wrong bank accounts, because "[c]ontributions to the PAC and [funds for] NSSTA's various corporate accounts arrive separately." See Supplement dated March 23, 2011, at 1 ("Supplement"), including as attachments Reconciliation Notes and Bank Records. NSSTA PAC states "[w]e have not identified a circumstance since the new Executive Director took over processing contributions and bookkeeping wherein a PAC contribution arrived in the same envelope as a contribution to NSSTA." *Id.* The PAC changed bank accounts from a Citibank account to a SunTrust Bank account between January and February, 2008, around the time that the initial deposit errors occurred, but the Submission does not indicate that this change was in any way related to the deposit problems. The bank records show that at all times the PAC's account maintained sufficient funds, exclusive of the mis-deposited NSSTA funds, to pay all of its obligations. See Bank Records, attached to Supplement.

1 periods ranging from a few days to a few months. See Submission at 2. In addition, the PAC
2 accepted two impermissible corporate contributions and later refunded those contributions
3 without reporting either the receipt or refund to the Commission. The chart below lists each of
4 the transactions at issue:

5 **PAC CONTRIBUTIONS INTO NSSTA ACCOUNT**

<u>Date</u>	<u>Contributor</u>	<u>Related Corrective Transfer</u>	<u>Amount</u>
12/11/07	JoAnn Ebdon	1/25/08	\$500
12/14/07	Sean Coleman	1/25/08	\$1000
		TOTAL	\$1,500

6
7 **NSSTA FUNDS INTO PAC ACCOUNT**

<u>Date</u>	<u>Contributor</u>	<u>Related Corrective Transfer</u>	<u>Amount</u>
2/5/08	NA	2/20/08	\$50
3/20/08	NA	6/17/08	\$1,150
3/24/08	NA	6/17/08	\$1,150
3/28/08	NA	3/14/11	\$5,100
3/31/08	NA	6/17/08	\$1,800
4/4/08	NA	6/17/08	\$690
4/7/08	NA	6/17/08	\$690
5/14/08	NA	6/17/08	\$371
8/18/08	NA	4/9/09	\$227
12/10/08	NA	4/9/09	\$500
		TOTAL	\$11,728

8
9 **CORPORATE CONTRIBUTIONS**

<u>Date</u>	<u>Contributor</u>	<u>Related Corrective Transfer</u>	<u>Amount</u>
5/19/09	Millenium Settlements	5/28/09 (refund to contributor)	\$500
12/13/10	Richmond Settlements	3/14/11 (refund to contributor)	\$250
		TOTAL	\$750

10
11 NSSTA PAC did not timely report to the Commission the mistaken deposits into the
12 PAC's bank account and PAC funds into the NSSTA bank account, the corrective transfers, or
13 its receipt and later refunds of corporate contributions. See Submission at 2, Reconciliation
14 Notes attached to Bank Records, and Letter from Counsel, May 27, 2011. Rather, NSSTA PAC
15 first reported these transactions to the Commission in amended reports filed on February 8, 2011.

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In addition to the reporting issues discussed above, the Submission and follow-up communications from counsel identified several other types or categories of reporting discrepancies that were not quantified, including failure to report interest earned, contributions received, refunds, offsets to operating expenditures, and taxes paid.² See Submission at 1; see also Reconciliation Notes attached to Bank Records and Letter from Counsel, May 10, 2011. The ongoing failures to report all transactions also resulted in incorrectly reported cash-on-hand for the PAC from the 2007 Year-End Report through the PAC's 2010 reporting. The total discrepancies between the PAC's original disclosure reporting and its amended reporting, including the mis-deposits listed above, are as follows:

<u>Year</u>	<u>Receipts</u>	<u>Disbursements</u>	<u>Total</u>
2007	33.46 ³	0.00	33.46
2008	12,741.75	5,914.75	18,656.50
2009	6,373.09	7,100.00	13,473.09
2010	1,901.17	8,310.46	10,211.63
			\$42,374.68

In response to the discovery of the deposit and reporting errors, NSSTA PAC severed ties with vendor Smith Bucklin and has hired a different consulting company to manage its accounts and its disclosure reports. NSSTA and NSSTA PAC also made additional corrective transfers

² The Submission failed to identify specific dollar figures for the reporting errors made, and follow-up communications with counsel confirmed that Respondents had not determined specific amounts that correlated to the categories of errors revealed in the Submission. To determine an amount in violation, OGC compared NSSTA PAC's original disclosure reports with its amended reports to determine total annual receipt discrepancies and total annual disbursement discrepancies for each year.

³ This figure does not include the 12/11/07 and 12/14/07 PAC contributions that were mis-deposited into the NSSTA general treasury account. The PAC had originally reported those contributions as received on 1/25/2008, the date on which it transferred the contributions from the NSSTA account to the PAC's account. Rather than amending its 2007 Year-End Report to account for those contributions when they were originally received, the PAC amended its January 2008 disclosure report to indicate that it would voluntarily disgorge the contributions because it had commingled those funds with NSSTA's general treasury funds.

1 and refunds as necessary. NSSTA PAC has filed numerous amended reports with the
2 Commission reflecting the correct information about the original transactions and reporting any
3 corrective transfers and refunds. \$6,850 in outstanding disbursements related to the Submission
4 were resolved during the first half of 2011 and will be reported on the PAC's 2011 semi-annual
5 Form 3X disclosure report, due July 31, 2011. See May 10, 2011 and May 27, 2011 Letters from
6 Counsel. These transactions include the transfer of \$5,100 in mis-deposited funds to the NSSTA
7 Operating Account, a refund of a \$250 corporate contribution to Richmond Settlements, and the
8 disgorgement of the funds noted in fn. 3, *supra*. NSSTA PAC also indicates that it has instituted
9 better internal controls, including "regular reconciliation of bank statements with its disclosure
10 reports, and more direct personal involvement – including review of bank statements – by the
11 Committee's new Treasurer and NSSTA consultants." See Submission at 2.

12 B. Legal Analysis

13 1. Untimely Deposits

14 Political committees must establish a committee depository account and must deposit all
15 receipts into the designated account. See 2 U.S.C. § 432(h). Further, all receipts by a political
16 committee shall either be deposited in the committee's accounts or returned to the contributor
17 without being deposited within 10 days of the treasurer's receipt. See 11 C.F.R. § 103.3(a). The
18 available information indicates that NSSTA PAC violated 2 U.S.C. § 432(h) and
19 11 C.F.R. § 103.3(a), by failing to deposit \$1,500 of NSSTA PAC contributions in its account
20 within 10 days because these funds were instead incorrectly deposited into the NSSTA general
21 account. Specifically, NSSTA PAC deposited a \$500 contribution from JoAnn Ebdono made on
22 December 11, 2007, and a \$1,000 contribution from Sean Coleman made on December 14, 2007,
23 into the NSSTA general account. The PAC's vendor transferred these funds from the NSSTA

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1 account to the PAC account on January 25, 2008, more than 10 days after receipt. Accordingly,
2 the Commission finds reason to believe that NSSTA PAC violated 2 U.S.C. § 432(h) and
3 11 C.F.R. § 103.3(a).

4 **2. Corporate Contributions**

5 The Act prohibits corporations from making any contribution in connection with a
6 Federal election, and prohibits political committees from knowingly accepting or receiving such
7 contributions. 2 U.S.C. § 441b(a). This prohibition extends to corporations using general
8 treasury funds to make contributions to their SSFs. See 11 C.F.R. § 114.5; see also *Campaign*
9 *Guide for Corporations and Labor Organizations* (2007), p. 15. Available information indicates
10 that \$11,728 in NSSTA funds were deposited into NSSTA PAC's bank account between
11 February 5, 2008, and December 10, 2008. Of that amount, \$5,100 of the corporate funds
12 remained in the PAC's bank account for almost three years until March 14, 2011. See chart on p.
13 4, *supra*. Respondents also indicate that on December 13, 2010, the PAC accepted a \$250
14 prohibited corporate contribution from Richmond Settlements, which was not refunded until
15 March 14, 2011, beyond the 30-day permitted refund period for prohibited corporate
16 contributions. See 11 C.F.R. § 103.3(b)(1).⁴ Accordingly, the Commission finds reason to
17 believe that NSSTA violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions,
18 and NSSTA PAC violated 2 U.S.C. § 441b(a) by accepting prohibited corporate contributions.
19 See MUR 6326 (American Association of Physician Specialists) (Commission found RTB for a
20 violation of 2 U.S.C. § 441b(a) where a trade association deposited Association corporate funds
21 into its SSF's account).

⁴ The PAC accepted another \$500 corporate contribution from Millenium Settlements on May 19, 2009, but it properly refunded this contribution on May 28, 2009, within the 30-day period for timely return of a prohibited corporate contribution. See 11 C.F.R. § 103.3(b)(1).

1 **3. Reporting**

2 A political committee's disclosure reports must disclose the amount of cash on hand at
3 the beginning of each reporting period. *See* 2 U.S.C. § 434(b)(1). A political committee's
4 disclosure reports must also disclose all receipts and disbursements. *See* 2 U.S.C. § 434(b)(2)
5 and (4). Committee treasurers are responsible for the timely and complete filing of disclosure
6 reports and for the accuracy of the information contained therein. *See* 11 C.F.R. § 104.14(d).
7 The available information indicates that NSSTA PAC violated 2 U.S.C. § 434(b)(1), (2) and (4)
8 and 11 C.F.R. § 104.14(d) throughout the 2007-2010 period by failing to accurately report its
9 cash on hand for each reporting period, and by failing to disclose all receipts and disbursements
10 in its ongoing disclosure reporting. NSSTA PAC admits that its disclosure reports from the
11 Year-End 2007 Report through the 2010 Reports did not disclose numerous receipts and
12 disbursements, including: (1) the deposit of NSSTA funds into the PAC's account; (2) the
13 transfers of NSSTA funds out of the PAC's account; (3) the subsequent transfers into the PAC's
14 account of funds originally mistakenly placed in the NSSTA general account; (4) certain
15 permissible contributions received; (5) receipt of prohibited corporate contributions; and
16 (6) other items that were not quantified, including receipts of interest earned, disbursements for
17 tax payments, and certain refunds of operating expenses. *Supra* at 4-5. These errors also
18 resulted in ongoing misreporting of the PAC's cash-on-hand from 2007 through 2010.
19 Therefore, the Commission finds reason to believe that the National Structured Settlements
20 Trade Association PAC and Eric Vaughn, in his official capacity as treasurer, violated 2 U.S.C.
21 § 434(b)(1), (2), and (4) and 11 C.F.R. § 104.14(d).

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